LIBRARY
SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
AUG 27 1973
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 73-192

BIAGIO J. PERRELLO, Petitioner,

v.

INDIANA SUPREME COURT AND
DISCIPLINARY COMMISSION OF THE
INDIANA SUPREME COURT, Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE INDIANA SUPREME COURT

BRIEF FOR RESPONDENT IN OPPOSITION

Paul H. Buchanan, Jr.
Vice-Chairman
Indiana Supreme Court
Disciplinary Commission

John B. Ramming
Executive Secretary
Indiana Supreme Court
Disciplinary Commission

Indiana Supreme Court
Disciplinary Commission
814 I.S.T.A. Building
150 West Market Street
Indianapolis, Indiana 46204

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1972

NO. 73-192

IN THE MATTER OF BIAGIO J. PERRELLO

BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF INDIANA

CERTIFICATE OF SERVICE

I hereby certify that three (3) copies of the foregoing "Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of Indiana" were mailed in the United States first class mail, postage prepaid, and addressed to Mr. Biagio J. Perrello, Suite 901, 136 East Market Street, Indianapolis, Indiana, 46204, this 25th day of August, 1973.

Paul H. Buchanan, Jr.

Paul H. Buchanan, Jr.
Vice Chairman
Indiana Supreme Court
Disciplinary Commission
421 State House
Indianapolis, Indiana 46204

INDEX

Opinions Below 1

Statement 2

Summary of Argument 4

Argument 6

I. The decision below does not violate the rights of attorneys under the First Amendment of the United States Constitution by restricting their freedom of speech and right of association 6

II. The decision below does not conflict with recent decisions of this Court concerning the right of attorneys under the First and Fourteenth Amendments of the United States Constitution not to be tried in state disciplinary proceedings for alleged professional misconduct under vague, ambiguous and overbroad statutes. . 15

III. The decision below does not conflict with recent decisions of this Court concerning the right of attorneys under the Fourteenth Amendment of the United States Constitution to receive a fair trial both substantively and procedurally in accordance with due process and equal protection of the law at state disciplinary proceedings 18

Conclusion 36

CITATIONS

Cases:

Brotherhood of R. Trainmen v. Virginia, 377 U.S. 1 (1964). . 4,8,11,12

In Re Echeles, 430 F.2d. 347 [C.A.7th (1970)] 19,21

In re Petition of Leach, 134 Ind. 665, 34 N.E.641 (1893) 14

In Re Ruffalo, 390 U.S. 544 (1968) 19,33

Joseph Triner Corp. v. McNeil, 363 Ill. 559, 2 N.E. 2d. 929 (1936) 16

Lockheed Aircraft Corp. v. Superior Ct., 28 Cal.2d. 481, 171 P.2d. 21 (1946) . . . 17

N.A.A.C.P. v. Button, 371 U.S. 415 (1968). 4,6,9,12

Pacific Coast Dairy v. Police Court, 214 Cal. 668, 8 P.2d. 140 (1932) 17

Selling v. Radford, 243 U.S. 46 (1917) 28,34,35

State ex rel. Indiana State Bar Ass'n. v. Moritz, 244 Ind. 156, 191 N.E.2d. 21 (1963) 14

United Mine Workers v. Illinois State Bar Asso., U.S. 217 (1967) 4,10,11,12

United States v. Hunter, 459 F.2d. 205 [C.A. 4th (1972)] 13

United Transportation Union v. State Bar of Michigan, 401 U.S. 576 (1971). 4,11

Constitutional Provisions:

Constitution of the United States,
Amendment 1 6,7,9,10,11
Amendment 10 15
Amendment 14 6,7,9,10,11,18,29

Rules:

Code of Professional Responsibility For Attorneys at Law 4,5,7,12,16,20,22

Indiana Admission and Discipline Rule 23
§1(a) 29,30
§2 20
§3(a) 20
§10(a). 29,30,32
§11(c). 20,26,32
§13(a). 25,26,32
§14(c). 26,32
§14(d). 18
§14(e). 20,21,28
§15(a). 3
§15(b). 20,28

Rules of the United States Supreme Court
Court Rule 8 21

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1972

No. 73-192

BIAGIO J. PERRELLO, Petitioner,

v.

INDIANA SUPREME COURT AND DISCIPLINARY COMMISSION OF THE INDIANA SUPREME COURT, Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE INDIANA SUPREME COURT

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Indiana Supreme Court (App. A of Petition) is reported at 295 N.E.2d. 357.

Statement of Case

The Petitioner, Biagio J. Perrello, was a practicing attorney in Indianapolis, Marion County, Indiana, holding an Indiana license granted him by admission to the Bar of the State of Indiana on May 20, 1970. On May 1, 1973, the Indiana Supreme Court by an Order and Opinion, suspended the Petitioner from the practice of law in Indiana for two (2) years.

At the evidentiary hearings on November 14, 1972, December 21, 1972, and February 12, 1973, the Disciplinary Commission undertook to prove, and the Hearing Officer found, that:

a. the Petitioner on five (5) specific occasions unethically sought out prospective clients in the corridors of the City-County Building of Marion County, Indiana, adjacent to the Municipal Courtrooms.

b. the Petitioner, in three (3) of the five (5) instances of unethical solicitation secured employment as a result of the unsolicited advice that they were in need of an attorney.

c. the Petitioner was the subject of thirty-three (33) separate complaints regarding unethical solicitation practices referred to and investigated by the Honorable D. William Cramer, Presiding Judge of the Municipal Courts of Marion County, Indiana

d. the Petitioner made it a practice to recommend employment of himself to non-lawyers who have not sought his advice regarding his employment as a lawyer; of giving unsolicited advice to laymen that they should obtain counsel;

and of obtaining employment resulting from that advice.

e. the Petitioner engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation.

The Hearing Officer entered his Findings of Fact and Recommendation on February 23, 1973, and the Petitioner subsequently filed a Petition for Review by the Indiana Supreme Court, pursuant to Indiana Admission and Discipline Rule 23 §15(a). Thereafter, the Indiana Supreme Court examined and reviewed the Hearing Officer's Findings of Fact and Recommendation and the Petitioner's Petition for Review of the Findings and Recommendations, and on May 1, 1973, unanimously approved the Findings and Recommendation of the Hearing Officer.

On May 7, 1973, the Petitioner filed a Motion to Reconsider Judgement with the Indiana Supreme Court, which Motion was stricken by the Indiana Supreme Court on May 7, 1973.

The Petitioner then filed an Application for Stay of Judgement with the Indiana Supreme Court on July 20, 1973, which application was denied on July 24, 1973.

On July 27, 1973, Petitioner filed in this Court an Application for Stay of Order of the Indiana Supreme Court and a Petition for Writ of Certiorari to the Supreme Court of Indiana. On July 30, 1973, Mr. Justice Rehnquist denied Petitioner's request for stay.

The Indiana Supreme Court Disciplinary Commission now directs the following brief in opposition to the Petition for Writ of Certiorari to the Supreme Court of Indiana.

Summary of Argument

1. The Petitioner has focused his attack of unconstitutionality against the disciplinary rules proscribing solicitation of clients by attorneys at law primarily on the basis of three (3) Supreme Court decisions. N.A.A.C.P. v. Button, Trainmen, United Mine Workers, infra. The holdings of these cases, however, are based upon specific facts and the similar nature of each case which are not even remotely analogous to Petitioner's case at hand. The cases cited by Petitioner share the "common thread" of "collective activity undertaken to obtain meaningful access to the courts..." United Transportation Union v. State Bar of Michigan, infra. The Petitioner's situation does not share a "common thread" with these cases. He is a sole practitioner whose practice has been to station himself in the corridors adjacent to the Municipal Courtrooms so that he may solicit business from people who are there to appear in court. The holdings of the cases he has cited have not extended constitutional protection to the individual attorney-client relationship and there is no authority or precedent condoning the type of activity in which the Petitioner has engaged and which is in direct violation of the disciplinary rules of the Code of Professional Responsibility.

2. The Petitioner attacks two (2) disciplinary rules, which he has been found to have violated, as being vague, ambiguous, and overbroad and, therefore, unconstitutional. He contends that the

meanings of these rules are not clear and are susceptible to different meanings by different persons. The Respondent submits that these rules, when read in the context of the Code of Professional Responsibility, are commonly understood by reasonable men and particularly by attorneys at law. The Respondent also contends that if these disciplinary rules are given a "reasonable and practical construction" and are construed as they should be by an attorney at law in the "ordinary conduct of his affairs" that they are not unconstitutionally vague, ambiguous or overbroad.

3. The Petitioner, in his third reason for granting this petition, has attacked the constitutionality of Indiana's Admission and Discipline Rule 23 and the manner in which both the Disciplinary Commission and the appointed Hearing Officer have conducted the investigation and proceedings below. He has made various and miscellaneous charges of violations of his due process rights in seventeen (17) questions presented, i.e. questions three through nineteen (3-19). The Respondent contends that the Petitioner's due process rights have not been violated and that A.D. Rule 23 and the proceeding followed thereunder are not unconstitutional. The Respondent has answered each of the Petitioner's allegations in the argument which follows and has shown each charge to be false and without merit. A summary of each argument on this issue is not practical.

Reasons For Opposition To The Writ

The Petitioner has set forth in his petition three (3) reasons for granting the Writ of Certiorari. These reasons, presumably reflect the nineteen (19) questions presented by Petitioner which are discussed in his Statement of the Case. The Respondent will answer each of the nineteen (19) questions presented in the following discussion of the Reasons for Opposition to the Writ referring to each as Petitioner has numerically designated.

1. The decision below does not violate the rights of attorneys under the First Amendment of the United States Constitution by restricting their freedom of speech and right of association.

The Petitioner has focused his attack of unconstitutionality against the disciplinary rules proscribing solicitation of clients by attorneys at law primarily on the basis of three (3) Supreme Court decisions dealing with similar issues. This is the first question presented by Petitioner. However, Petitioner has extracted selected quotations and inserted his own personal interpretations of these cases without discussing them factually and in relation to the particular situation at hand. For this reason, the Respondent will briefly discuss each case relied upon by Petitioner in his argument and distinguish each and their combined effect from the situation and circumstances as they exist regarding the Petitioner.

The Petitioner cites N.A.A.C.P. v. Button, 371 U.S. 415, 9 L.2d. 405, 83 S.Ct. 328 (1968), which involved the litigation activities of the N.A.A.C.P. civil rights organization and the constitutionality under the First and Fourteenth Amendments

of a Virginia Statute which banned, "the improper solicitation of any legal or professional business." The activities of this organization in question included the effort to explain to parents and children the legal steps necessary to achieve desegregation, the encouragement of bringing lawsuits, and the assisting and financing of litigation aimed at serving the elimination of racial discrimination in which litigants were represented by members of the organization's legal staff. These activities were held to be modes of expression and association protected by the First and Fourteenth Amendments which Virginia could not prohibit under its power to regulate the legal profession nor was such activity found to be violative of the Canons of Professional Ethics. This decision also followed the consistent holdings of prior decisions of this Court by requiring, "that only a compelling state interest in the regulation of a subject within the State's constitutional power to regulate can justify limiting First Amendment freedoms." The Court states further, that, "a State may not, under the guise of prohibiting professional misconduct, ignore constitutional rights." However, in reviewing this decision, one must note that this case turned on very narrow facts and in view of the particular objectives of the civil rights organization. The case involved a politically powerless group of solicitees asserting rights traditionally favored by the courts; the attorneys and staff members of the organization were motivated by political considerations of national importance; and the organization was being prosecuted under a statute which, if allowed to stand, would deter and even block school

desegregation attempts. Having in mind the aims and purposes of this organization, the Court stated:

> "In the context of N.A.A.C.P. objectives, litigation is not a technique of resolving private differences; it is a means for achieving the lawful objectives of equality of treatment by all government, federal, state and local, for the members of the Negro community in this country. It is thus a form of political expression."
> (9 L.Ed.2d. at p. 416)

In view of the specific facts and nature of this case, the Respondent must contend that its holding cannot be applied to or be extended to apply to the Petitioner's individual situation. This decision applies to collective activity only and to solicitation in aid of political causes and legislatively created causes. The Petitioner is a sole practitioner who has been found guilty of soliciting business from people waiting to appear in municipal court. Those people Petitioner has solicited, and the representation resulting therefrom, has not involved any political causes nor could his practice be described as a "form of political expression." Petitioner has solicited business from people with only private problems to resolve and for his own private gain. The Petitioner's situation is not even remotely analogous to this case and its holding should not be construed as applicable thereto.

The Petitioner has also relied upon Brotherhood of R. Trainmen v. Virginia,

377 U.S. 1, 12 L.Ed.2d. 89, 84 S.Ct. 1113 (1964). This case, as did N.A.A.C.P. v. Button, supra, involved the collective activity of members of an organization. The party organization in this case was a fraternal organization of railroad workers, which organization maintained a plan by which it advised injured members to obtain legal advice before making settlement of claims under the Safety Appliance Act and the Federal Employee's Liability Act. Particular attorneys were recommended to handle such claims who had been approved by the organization as legally and morally competent to handle the claims. This activity was charged by the state bar associations as constituting the solicitation of legal business and the unauthorized practice of law. This Court, however, held that the activities of the organization were constitutionally protected rights of free speech, petition, and assembly under the First and Fourteenth Amendments. However, in so holding, the Court was careful to point out that these particular activities by this organization did not constitute "a commercialization of the legal profession which might threaten the moral and ethical fabric of the administration of justice," which language strongly implies that any activity construed as "commercializing the legal profession" would not be protected constitutionally.

The activities the Petitioner wishes this Court to declare constitutionally protected would clearly amount to the "commercialization of the profession," for it would lead to wide-scale advertising and solicitation which the standards of the legal profession have always proscribed. The Court further notes that the litigation involved has been authorized by Congress, "to effectuate a

basic public interest," and that the members of this organization have the right to associate together to enforce the rights granted them under federal law.

This case, therefore, is also applicable only to the specific and narrow facts involved and its holding does not apply to give constitutional protection to the conduct of a sole practitioner unethically soliciting business which does not involve any "basic public interests" or is related to the protected collective activity of a legitimate organization.

The third case upon which Petitioner erroneously relies is, United Mine Workers v. Illinois State Bar Asso., 389 U.S. 217, 19 L.Ed.2d. 426, 88 S.Ct. 353 (1967). In this case, the state bar association filed a complaint seeking to restrain this labor union from engaging in activities alleged to constitute the unauthorized practice of law. Illegal or unethical solicitation was not in issue nor was it discussed in the majority opinion. The union had employed a licensed attorney on a salary basis to represent any of the union members who wished his services in the prosecution of workman's compensation claims.

On the basis of freedom of speech, assembly, and petition guaranteed by the First and Fourteenth Amendments, the Court held that the labor union had a right to hire an attorney in this capacity. The Court applied the same rationale as was used in the two cases discussed above and for the same reasons is not analogous to nor may its holding be applied to Petitioner's situation at hand. The Petitioner has offered a brief interpretation of the Court's holding in this case with no explanation of his in-

terpretation. In light of the fact that Petitioner's statement of this case (Petition, p. 9 and 10) is totally inaccurate, the Respondent asserts that Petitioner's interpretations and arguments are totally without merit. The Petitioner has made references to the Court's decision in this case, United Mine Workers, supra, which are inaccurate and unrelated factually to the case to which he is referring and citing. To mis-state this case in this manner, the Petitioner has either been extremely negligent in the preparation of his petition or has attempted to misrepresent the nature and holding of a case cited in support of his argument to this Court. The quotations used by Petitioner are drawn from the dissenting opinion of Brotherhood of R. Trainmen v. Virginia, supra.

A fourth case cited by Petitioner but not discussed is, United Transportation Union v. State Bar of Michigan, 401 U.S. 576, 28 L.Ed. 2d. 339, 91 S.Ct. 1076 (1971). The United Transportation Union and the Brotherhood of Railway Trainmen, Trainmen, supra, are the same organization and the same legal services program is the subject of each case. The issue is the basic right to group legal action and the freedoms protected by the First and Fourteenth Amendments. This Court follows the rationale and holdings of the three cases discussed above and in doing so provides the basis for distinguishing these cases from the Petitioner's situation at hand, wherein the Court states:

> "The common thread running through our decisions in N.A.A.C.P. v. Button, Trainmen, and United Mine Workers is that collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment."
> (401 U.S. at p. 585)

Clearly, the Petitioner's situation at hand does not share this "common thread" with the above-discussed cases and their holdings will not apply to it and protect Petitioner's unethical activities. The holdings of the above cases have not extended constitutional protection to the individual attorney-client relationship within which the Petitioner has solicited business and the Code of Professional Responsibility makes it clear that this right of association is not included in the individual attorney-client relationship. Disciplinary Rule 2-103(D)(5), Codelof Professional Responsibility For Attorneys At Law, Ind. Ann. Stat. (Special Supp. 1971), has been drafted in view of the group legal service plans like those litigated in the above-discussed cases, and authorizes this type of constitutionally protected activity. However, there is no authority or precedent condoning the type of activity in which Petitioner has engaged and which is in direct violation of the disciplinary rules cited in the opinion below.

A further distinction between the situation at hand and the cases discussed above is perhaps best stated by Mr. Justice Brennan in N.A.A.C.P. v. Button, supra:

> "Resort to the courts to seek vindication of constitutional rights is a different matter from the oppressive, malicious, or avaricious use of the legal process for purely private gain." (9 L.Ed.2d. at p. 424)

There is no doubt that Petitioner's activities were for purely private gain. He was not selective as to who he solicited and would accept employment from any person who could pay a retainer. The main purpose of Petitioner's solicitation efforts were not to enlighten potential clients on how they may redress their grievances through the legal system, but instead, were solely for his own commercial private gain. Where the "main purpose" of solicitation is purely commercial, a state may exercise regulatory powers and there is a long line of authority which distinguishes between the expression of ideas protected by the First Amendment and commercial advertising in a business context. United States v. Hunter, 459 F.2d. 205 [C.C.A. 4th, (1972)].

Traditionally, the legal profession has always restricted advertising and prohibited solicitation by members of the profession, as a means of protecting the public interest. The values sought to be protected include the desire to protect the public against misrepresentation and overreaching; the desire to inhibit the stirring up of litigation; the desire to preserve the existing patterns of competitive advantage within the bar; and the desire to prevent the commercialization of the practice of law. The reasons for such restrictions will always be valid if the legal profession is to maintain high

standards of professionalism and the integrity of the attorney-client relationship. Ethical Consideration 2-9, Code of Professional Responsibility for Attorneys at Law, Ind. Ann. Stat. (Special Supp. 1971), states the rationale for such restrictions:

> "The traditional ban against advertising by lawyers, which is subject to certain limited exceptions, is rooted in the public interest. Competitive advertising would encourage extravagant, artful, self-laudatory brashness in seeking business and thus could mislead the layman. Furthermore, it would inevitably produce unrealistic expectations in particular cases and bring about distrust of the law and lawyers. Thus, public confidence in our legal system would be impaired by such advertisements of professional services. The attorney-client relationship is personal and unique and should not be established as the result of pressures and deceptions. History has demonstrated that public confidence in the legal system is best preserved by strict, self-imposed controls over, rather than by unlimited, advertising."

The Indiana Constitution gives to our Supreme Court the inherent power exclusively to discipline members of its Bar, State ex rel. Indiana State Bar Ass'n. v. Moritz, 244 Ind. 156, 191 N.E.2d. 21 (1963); In re Petition of Leach, 134

Ind. 665, 34 N.E. 641 (1893). The Respondent submits that the proper administration of this power is also a rational and legitimate exercise of a state's police power reserved to it by the Tenth Amendment to the Constitution of the United States. If the Petitioner has not shown the administration of this power to be arbitrary or in a capricious manner, this Court may not review this decision of the Indiana Supreme Court. The Respondent, therefore, submits that the proceedings below were not conducted in an arbitrary or capricious manner and that a review is neither proper or necessary.

2. The decision below does not conflict with recent decisions of this Court concerning the right of attorneys under the First and Fourteenth Amendments of the United States Constitution not to be tried in state disciplinary proceedings for alleged professional misconduct under vague, ambiguous and overbroad rules and statutes.

The Petitioner raised this issue in question number two and also states it as his second reason for seeking a Writ of Certiorari. He attacks D.R. 1-102 (A)(4) which states that "a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation," as vague, overbroad, and ambiguous and therefore, unconstitutional. Petitioner states that the meaning of this rule is unclear and susceptible to different meaning by different persons. The Respondent asserts that words such as dishonesty, fraud, deceit, and misrepresentation are understandable to any reasonable man and particularly so

to attorneys who should understand their duty and responsibilities to clients, the general public, other attorneys, and the judiciary. These are words commonly used to describe particular conduct and there is nothing vague about this rule. The Supreme Court of Illinois in, Joseph Triner Corp. v. McNeil, 363 Ill. 559, 2 N.E.2d. 929 (1936) held that, "A statute which employs without definition words in common use is not void for indefiniteness." This court stated further:

> "...where the words assailed, taken in connection with the context, are commonly understood, their use does not render a statute invalid."
> (2N.E.2d. at p. 939)

When this particular disciplinary rule is read in context, the Code of Professional Responsibility, the words in question are easily understandable and are not vague and indefinite to reasonable men.

The Petitioner also contends that D.R. 1-102(A)(6) is vague, overbroad, ambiguous, and unconstitutional. This rule states that, "a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law". The Respondent will submit that this rule has general applicability and may be used when an attorney has conducted himself in any manner which would raise a substantial question of misconduct. Otherwise, this particular rule would not be employed. However, the Respondent contends that in view of the regulatory and exclusive nature of rules such as these, that this rule is not

vague and ambiguous. One must keep in mind that the Code of Professional Responsibility and the disciplinary rules contained therein only apply to the esteemed members of the legal profession and have no effect whatsoever on laymen and other professionals who would not be expected to know and understand the high standards of ethics to which an attorney is held responsible. The holding of the California Supreme Court, in, Lockheed Aircraft Corp. v. Superior Ct., 28 Cal. 2d. 481, 171 P.2d. 21 (1946), applies to Petitioner's attack upon both these rules, wherein the court stated:

> "A statute should be sufficiently certain so that a person may know what is prohibited thereby and what may be done without violating its provisions, but it cannot be held void for uncertainty if any reasonable and practical construction can be given its language. Mere difficulty in ascertaining its meaning, or the fact that it is susceptible of different interpretations will not render it nugatory. Doubts as to its construction will not justify us in disregarding it."

Likewise, in, Pacific Coast Dairy v. Police Court, 214 Cal. 668, 8 P.2d. 140 (1932), the court stated:

> "Thus, when a statute employs words or phrases having a well-settled common-law meaning of which a reasonable man in the ordinary conduct of his affairs

> is fully aware, it is not for the court to determine that the statute is ambiguous or indefinite because through a strained construction of these words and phrases some ambiguity might arise."
> (8 P.2d. at p. 143)

The Respondent contends that if these disciplinary rules are given a "reasonable and practical construction" and construed as they should be by an attorney at law in the "ordinary conduct of his affairs" that they are not unconstitutionally vague, ambiguous, or overbroad.

3. The decision below does not conflict with recent decisions of this Court concerning the right of attorneys under the Fourteenth Amendment of the United States Constitution to receive a fair trial both substantively and procedurally in accordance with due process and equal protection of the law at state disciplinary proceedings.

The Petitioner's third reason for seeking a Writ of Certiorari is a broad and general attack alleging violations of both procedural and substantive due process in the disciplinary proceddings brought against him. The Respondent must presume that Petitioner's questions presented, three through nineteen (3-19), constitute the substance of his argument. The Respondent answers each question as presented by Petitioner as its third reason why this Petition for Writ of Certiorari should not be granted:

(3) The Petitioner alleges that Section 14(d) of Indiana's A.D. Rule 23

(App. C of Petition) is invalid because it provides for proof by a preponderance of the evidence. The Petitioner cites In Re Ruffalo, 390 U.S. 544, 88 S.Ct. 1222, 20 L.Ed.2d. 117 (1968), for the proposition that disciplinary proceedings are quasi-criminal in nature and thus that the standard of proof is required to be proof beyond a reasonable doubt.

The Respondent submits that In Re Ruffalo, supra, does not support the proposition that the burden of proof in a disciplinary proceeding is to be proof beyond a reasonable doubt.

That case was directed only to the issue of notice and held that the attorney-respondent in a disciplinary proceeding be given adequate notice of the charges against him before being required to respond thereto. The Court concluded that the essential requirements of a disciplinary proceeding are notice and the opportunity to be heard. On the other hand, disciplinary proceedings "are neither civil nor criminal in nature but are special proceedings, sui generis, and result from the inherent power of courts over their officers." In re Echeles, 430 F.2d. 347, 349 (7th Cir. 1970). Thus the rules as to the burden of proof in criminal cases do not apply in such proceedings and the state disciplinary rules here involved which place the burden on the Disciplinary Commission to prove the charges of misconduct by a preponderance of the evidence are not unconstitutional.

(4) The Petitioner contends that Rule 23 (App. C of Petition) of the Indiana disciplinary rules is vague and invalid because it fails to specify the type of punishment which should be imposed for the various types of misconduct that may be charged against an attorney.

Rule 23(3)(A) specifies the various types of punishment or discipline that may be imposed upon an attorney. The "Preliminary Statement" (A-1) to the Code of Professional Responsibility, which is incorporated into the state disciplinary rules by reference in Rule 23(2), states that "The severity of judgement against one found guilty of violating a disciplinary rule should be determined by the character of the offense and the attendant circumstances." The attendant circumstances is the important consideration of each case and the quantum of discipline warranted in each case is controlled not only by the type of misconduct found, but also by all of the circumstances involved. For these reasons, the rule is not vague and, therefore, is not unconstitutional.

(5) The Petitioner alleges that A.D. Rule 23 (App. C of Petition) is invalid because it does not specify what acts or what proof is required to justify a suspension pending final determination of the cause. These rules, contrary to the Petitioner's allegation, do specify the acts which justify a suspension pending final determination. Under A.D. Rule 23(2), the Indiana Supreme Court has specified that the grounds for disciplinary action are those as set forth in the Code of Professional Responsibility as adopted by the Indiana Supreme Court on March 8, 1971. A.D. Rules 23 (11)(c) and 23(14)(e) are to be read in connection with Rule 23(2), the Code of Professional Responsibility and A.D. Rule 23(15)(b), and provide for a temporary suspension of an attorney if the specific acts of misconduct involved are serious enought to warrant temporary suspension.

The disciplining of attorneys is a matter within the inherent authority of a court and an attorney may be subjected to disciplinary action even though the court has not promulgated any detailed rules concerning disciplinary proceedings. See In re Echeles, supra. Furthermore, Rule 23(14)(e) which requires the respondent to show cause as to why he should not be suspended pending final determination of the matter is similar to the rule followed by the United States Supreme Court (Rule 8, Rules of the Supreme Court of the United States) in disciplinary proceedings. In particular, Rule 8 of the United States Supreme Court provides that an attorney is to be suspended as soon as the Court is given information concerning his misconduct and that the attorney is then to be given an opportunity to show cause before the Court enters a final order.

(6) The Petitioner contends that he was denied the right to a fair hearing because the Hearing Officer refused to continue the disciplinary hearing scheduled for December 21, 1972, thereby depriving the Petitioner of the assistance of counsel at the hearing.

The Petitioner employed Sigmund J. Beck in the latter part of October, 1972, to represent him in the disciplinary proceeding. Mr. Beck did represent the Petitioner at the hearing on November 14, 1972, but on December 7, 1972, Mr. Beck notified the Petitioner that he was withdrawing as counsel in the matter. He filed a motion in the proceeding, stating that he was withdrawing at the request of the Petitioner. (App. E of Petition)

The Petitioner contends that he did not request Mr. Beck to withdraw from the

case but that Mr. Beck withdrew because of a disagreement over the terms of the fee arrangements. The Petitioner states that Mr. Beck originally agreed to handle his case for $1,000 and thereafter insisted that the Petitioner would have to pay $3,500 for his services. These allegations are refuted in the motion filed by Mr. Beck, who stated that the Petitioner failed to pay the fee agreed upon by the parties before the hearings began and that the Petitioner said he would obtain other counsel or would represent himself in the proceeding.

The Respondent, therefore contends that the Hearing Officer's denial of Petitioner's request for a continuance of the December hearing did not deprive Petitioner of a fair trial. Petitioner had ample time to employ counsel that would please him and the discharge of his attorney at this time was his own decision. A continuance to allow Petitioner to look for other counsel was not in order and the denial of that request was proper.

(7) The Petitioner contends that the Indiana Supreme Court found him guilty of violating Rule 1-102(A)(1) of the Code of Professional Responsibility (App. B of Petition) although the Disciplinary Commission had not charged him with violating that rule and thus deprived him of fundatental due process.

The Hearing Examiner did refer to D.R. 1-102(A)(1) in his conclusions of law despite the fact that the Commission had not referred to this rule in the complaint filed against the Petitioner. The Respondent submits, however, that this did not in any way violate the Petitioner's due process rights. Disciplinary Rule

1-102(A)(1) is an introductory rule that states very simply that "A lawyer shall not violate a disciplinary rule". Thus the statement that the Petitioner violated this rule added nothing to the conclusion that the Petitioner violated the other rules as alleged.

(8) The Petitioner contends that he was denied a fair hearing because the Hearing Officer refused the Petitioner's request to call additional witnesses to testify at the hearing on February 12, 1973.

The record shows that the Petitioner called some thirty (30) witnesses to testify in his behalf at the hearing on December 21, 1972, and then requested permission to call additional witnesses at the next hearing. The Petitioner also requested permission to personally testify again even though he had already testified in his own behalf at the first hearing on November 14, 1972. The Hearing Officer decided to permit the Petitioner to testify a second time but denied the Petitioner's request to call additional witnesses, concluding that the proposed testimony would only be cumulative in nature. (Transcript dated December 21, 1972, p. 355.) The Hearing Officer had the authority to limit testimony which was merely repetitive and cumulative in nature, and a review of the testimony in the record shows that he did not abuse his discretion in this regard. In fact, the Petitioner was alerted at numerous occasions during the hearing that the Hearing Officer considered the testimony to be repetitive and cumulative and that the Petitioner should attempt to put before the Hearing Officer any other or different evidence that he might have. (Transcript dated December 21,

1972, pp. 198, 263, 266, 289-89, 306.) Despite these various warnings, the Petitioner continued to place repetitive and cumulative evidence in the record. Furthermore, he made no offer of proof that would show that he intended to produce different evidence from the additional witnesses. From these facts, the court's efforts of accommodation, and the repetitiveness of the Petitioner's first thirty (30) witnesses, Petitioner was not deprived of a fair trial nor suffered any violation of his constitutional rights as a result thereof.

(9) and (10) The Petitioner alleges that the hearing held in this matter on November 14, 1972, deprived him of his due process rights because he was not given adequate time to prepare his defense and because his motions for continuance were denied.

The Respondent submits that the Petitioner was given adequate time to prepare his defense before the first hearing on November 14, 1972. The "Verified Complaint for Disciplinary Action" (A.5) was filed against the Petitioner on August 23, 1972, as was the "Motion for Suspension Pending Prosecution" (A.12) and a copy of this motion was mailed to the Petitioner at that time. The "Verified Complaint for Disciplinary Action" was formally served on the Petitioner on August 24, 1972, as shown by the sheriff's return of the summons (A.22). The hearing on the motion for suspension was held on November 14, 1972, giving the Petitioner over two and one-half months to secure counsel and to prepare his defense.

The Petitioner admits that he was advised on October 18th that the hear-

ing would be held on November 14, giving the Petitioner notice four weeks prior to the date of the hearing. Despite such notice, the Petitioner has stated that he did not retain counsel until "near the end of October." Even then, the Petitioner's attorney had over two weeks to prepare for the hearing on November 14, which was only a preliminary hearing and not the final hearing on the charges against the Petitioner.

The Respondent, therefore, submits that the Petitioner had ample time to obtain the assistance of counsel and to prepare his defense prior to the hearing on November 14 and that the denial of his motions for continuance did not violate his due process rights.

(11) The Petitioner alleges that Section 13(a) of A.D. Rule 23 (App. C of Petition) was violated by the Hearing Officer and the Disciplinary Commission and consequently violated the Petitioner's procedural due process rights. That section of the rule states that a hearing on the complaint of misconduct is to be conducted "within sixty (60) days after the Commission's determination of reasonable cause." Reasonable cause is determined prior to the time of filing the Verified Complaint for Disciplinary Action, therefore, the sixty (60) day period would have begun on August 23, 1972, the date the Verified Complaint was filed. The Petitioner claims that had this section of the rule been followed, he would have had sixty days to prepare his defense rather than only twenty-seven (27) days. It is clear that Petitioner, in fact, had over sixty (60) days to prepare his defense, from August 24, 1972, the date he received a copy of the Verified Com-

plaint, until November 14, 1972, the first hearing date. The Respondent submits that Petitioner's argument is without merit because the Petitioner has shown no prejudice due to any alleged violation of A.D. Rule 23(13)(a). The Respondent also notes the inconsistency in the Petitioner's allegations; on the one hand, he appears to argue that the hearing was held too late; on the other hand, he appears to argue that the hearing was held too early (Question Presented #9).

(12) The Petitioner alleges he did not receive notice of the hearing date and place of the hearing fifteen (15) days prior to the December 21, 1972, hearing. However, at the close of the November 14, 1972, hearing, at which the Petitioner was present, the Hearing Officer, the Disciplinary Commission, counsel for Petitioner, and Petitioner agreed to the December 21, 1972, date for the next hearing (December 21, 1972 Transcript, pp. 187-191). The Petitioner was present at the December 21st hearing and testified, therefore, he evidently had notice of the hearing.

(13) The Petitioner alleges his due process rights have been violated by the temporary suspension ordered by the Indiana Supreme Court (App. D of Petition) because he was penalized before he had a trial on the merits of the case. The Respondent submits that Petitioner's rights have not been violated. Sections 11(c) and 14(c) of A.D. Rule 23 (App. C of Petition) authorize the suspension of an attorney pending the final determination of the disciplinary proceedings only if:

a. the Disciplinary Commission files a motion asking for such suspension;

b. the attorney fails, at a hearing upon the motion, to show cause why he

should not be suspended;

c. the complaint states facts constituting and the Commission determines there is reasonable or probable cause to believe the attorney is guilty of misconduct which, if proven, would warrant permanent disbarment or suspension for a definite or indefinite period.

Due to the continuing nature of Petitioner's misconduct, such a suspension was warranted and justified.

It should be noted, however, that the Disciplinary Commission was required, at the hearing on the Motion for Suspension, to show reasonable cause why Petitioner should be temporarily suspended. Petitioner was then allowed to testify concerning all the charges brought against him. (November 14, 1972 Transcript, pp. 156-186).

(14) The Petitioner challenges the sufficiency of the findings of fact and conclusions of law filed by the Hearing Officer on November 16, 1972, (App. J of Petition), and on February 23, 1973, (App. K of Petition). In both instances, the Hearing Officer has submitted his findings of fact with his recommendation which should be ample notice of the basis upon which the Hearing Officer made his determination. The Hearing Officer cites to the record of the evidence in his findings of fact for final determination of this cause. The Petitioner, therefore, has suffered no hardship in determining what facts support the Hearing Officer's recommendations and there is no merit to Petitioner's claim of lack of knowledge or notice of the basis upon which the Hearing Officer made his determination.

The Petitioner also has failed to point out any specific finding of fact or conclusion of law that was not properly substantiated by evidence in the record. Thus, the Petitioner has failed to meet the burden as set forth in Selling v. Radford, 243 U.S. 46, 50-51 (1917).

(15) The Petitioner contends that the Indiana Supreme Court was required to examine the transcript of his hearing held on November 14, 1972, before the Court could issue the suspension order dated November 20, 1972. (App. K of Petition).

He argues that the court's failure to examine the transcript amounted to a violation of due process.

The Respondent submits that this argument deserves no merit. The state's disciplinary rules are designed to provide for a temporary suspension of an attorney following a hearing before a hearing officer subject to a review by the Indiana Supreme Court. Rule 23(14)(e) provides for a hearing and a recommendation by the hearing officer; Rule 23(15)(b) provides that the Indiana Supreme Court may "forthwith" enter an order of suspension upon receipt of a recommendation for suspension; and Rule 23(15)(b) provides for a review by the Court of the order of suspension upon a petition by the Petitioner. The order of suspension dated November 20, 1972, reflects that the Indiana Supreme Court exercised its discretion and authority in reviewing the Hearing Officer's findings of fact and conclusions of law and in entering the order of suspension, and the Petitioner has not shown that this procedure has in any way violated basic concepts of due process.

(16) The Petitioner alleges that the evidence accumulated by "Mr. Cramer" which was admitted against the Petitioner violated Section 10(a) of A.D. Rule 23 and the due process clause of the Fourteenth Amendment of the Constitution of the United States. The Petitioner has failed to make proper reference to "Mr. Cramer". "Mr. Cramer" was and still is the Presiding Judge of the Municipal Courts of Marion County, Indiana.

The Petitioner asserts that Judge D. William Cramer had no authority under the state disciplinary rules to investigate any complaints of unethical conduct or to submit any information concerning such complaints to the Disciplinary Commission.

The Petitioner then broadens this allegation into a general attack upon the integrity of Judge Cramer, asserting that Judge Cramer was not impartial while investigating the complaints against the Petitioner, that Judge Cramer "colluded" with various persons in order to get evidence against the Petitioner, and that Judge Cramer "protected" such other persons from being investigated for their own unethical behavior.

Rule 23(1)(a) of the state disciplinary rules establishes the procedure by which the Disciplinary Commission is to initiate an investigation of formal complaints concerning allegations of unethical conduct. Although the rule prescribes the procedure to be followed once a formal "grievance" is filed with the Commission, the disciplinary rules do not prohibit persons from submitting information to the Commission for its consideration which does not amount to a formal "grievance". As the testimony

of Judge Cramer reveals (Transcript dated November 14, 1972, pp. 99-127; Transcript dated December 21, 1972, pp. 40-73), Judge Cramer was and is the Presiding Judge of the Municipal Courts of Marion County. His duties as Presiding Judge include the duty to investigate charges of unethical conduct by attorneys in and around the Municipal Court, and it is only proper that he should submit the results of any such investigation to the Disciplinary Commission for its action. Here Judge Cramer did receive numerous complaints concerning the activities of the Petitioner and he forwarded this information to the Disciplinary Commission. Once the Commission received this information, the Commission certainly had not only the authority but also the duty to review it, even prior to the filing of a formal "grievance" as provided for in Rule 23 (1)(a), subject only to the requirement that it initiate the formal investigative procedure prescribed by the disciplinary rules as soon as a formal "grievance" was, in fact, filed under Rule 23(10)(a).

The Petitioner makes a direct and serious attack upon the integrity of Judge Cramer. In support of his allegations, he makes the following assertions with reference to the state proceeding:

(a) "Instead of investigating the unethical conduct of these people, Judge Cramer has protected them by making himself unavailable to anyone with a complaint against them. (See pages 171-173, 185-186 of November transcript and pages 47, 56-59, 64-65 of December transcript)."

The citations to the November transcript refer only to testimony given by the Petitioner in his own behalf.

The citations to the December transcript refer only to cross-examination of

Judge Cramer by the Petitioner personally, and the transcript reveals that the questions generally consisted of allegations made by the Petitioner which Judge Cramer then denied.

(b) "The hearing officer recognized the fact that Judge Cramer disliked the Petitioner. (See pages 55-56 of the December transcript and pages 15-17 of the February transcript)."

The citation to the December transcript does not support a conclusion that Judge Cramer in fact "disliked" the Petitioner. In fact, Judge Cramer is there quoted as stating that he had no personal animousity towards the Petitioner (Transcript, p. 55).

The citation to the February transcript refers only to the testimony by the Petitioner himself in his own defense.

(c) "Judge Cramer was not impartial when conducting his 'Investigation'. He colluded with other attorneys to try to get some evidence against the Petitioner to eliminate the Petitioner from competition in the field of criminal law. (See pages 310-323 of December Transcript.)"

The citation to the December transcript refers to the actual testimony of Mr. Greenwood in the disciplinary proceeding. A review of this testimony reveals that there is no basis whatever for the Petitioner's unwarranted assertion that the testimony substantiates the fact that Judge Cramer "colluded" with various attorneys in this matter. The testimony makes no reference to Judge Cramer whatsoever, referring only to "other attorneys here in Marion County." (Transcript, p. 321.)

(17) The Petitioner alleges that the Disciplinary Commission and the Hearing

Officer have disregarded Sections 10, 11, 13, and 14 of A.D. Rule 23 (App. C of Petition) with regard to the complaints of William G. Roush, Betty L. Barnes, Lawrence Shockley, D. William Cramer, and Richard Anderson. The Respondent submits this has not been the case and will first point out that only those counts as set forth in the Verified Complaint (A.5) constitute the charges of misconduct brought by the Disciplinary Commission against Petitioner.

Any evidence presented at the hearings, other than the witnesses making the complaints in each count and sub-count thereof, was evidence offered to corroborate the specific charges and not a different charge in and of itself. The Verified Complaint did not make any specific charges concerning Richard Anderson and he was not a complainant in these proceedings. Petitioner did, however, receive notice of the grievances filed against him by Judge D. William Cramer dated April 19, 1972 (A.23) and June 23, 1972 (A.25). Contained in the grievance dated April 20, 1972, of which Petitioner was given notice, was a memorandum prepared in part by Richard Anderson. Petitioner did respond to each of these two grievances.

The Disciplinary Commission concedes that the instances of Roush, Shockley, and Barnes, were not set out in either of the two particular grievances Petitioner received. However, these particular grievance forms are merely the instrument which allows the Disciplinary Commission to initiate an investigation, they are not the beginning of a formal judicial process. Nor is the Disciplinary Commission bound in its investigation or prosecution of a case by what is

specifically contained in such a grievance. If other matters evolve as a result of the investigation which is initiated by a grievance, the Disciplinary Commission is not restricted to only those matters brought to its attention by the initial grievance. The matters of Roush, Shockley, and Barnes were all set out in the Verified Complaint. Petitioner had notice of them and an adequate time to consider and prepare for his defense. These matters were simply additional instances of the solicitations which the grievances already communicated to Petitioner had indicated that the Disciplinary Commission was investigating.

The essential requirements for a disciplinary proceeding under the due process provisions of the federal constitution are notice and an opportunity to be heard. In Re Ruffalo, supra. Here the Petitioner was given full notice of the charges against him by the complaint filed on August 23, 1972, and he was given a full opportunity to be heard at the hearings held from November 14, 1972 to February 12, 1973.

(18) Each party whose incident with Petitioner is set out in the Verified Complaint, was intereviewed by either a member of the grievance committee of the Indianapolis Bar Association or a staff member of the Disciplinary Commission. The complaints of each party were verified by affidavit before the formal Verified Compalint was filed.

The Petitioner received a copy of the grievance of each complainant (A.23) and A. 25), except for the grievances of Roush, Shockley, and Barnes, as explained in the above paragraph.

The Petitioner was given notice by letters on June 12, 1972, (A.27) and August 15, 1972, (A.28) that there was reasonable cause to believe that he had been guilty of misconduct and that the matters had been docketed for investigation and report to the Indiana Supreme Court Disciplinary Commission.

(19) The Petitioner alleges that he was denied a fair hearing because the Hearing Officer (a) excluded evidence improperly, (b) made findings not supported by the evidence, (c) inferred throughout the proceeding that the Petitioner was guilty, (d) made erroneous decisions on objections and motions, and (e) was prejudiced against the Petitioner. The Petitioner lists numerous references to the transcript of the disciplinary proceeding in a string of citations to support each of the above allegations.

(a) The Respondent submits that this argument should be given no merit because the Petitioner has presented no argument and no authority in support of his assertions that the Hearing Officer excluded evidence imporperly at the disciplinary hearing. The Petitioner has failed to meet the burden of proof as required by Selling v. Radford, supra.

(b) The Respondent submits that the Hearing Officer's findings of fact and conclusions of law are supported by evidence introduced in the state disciplinary proceeding. The Petitioner has not shown that the Hearing Officer's findings are not supported by evidence in the record, but is essentially asking this Court to re-weigh the evidence. The Respondent finds this question impractical to answer and, therefore, relies upon the Hearing Officer's findings and cites to the record therein.

(c) The Respondent submits that the three references to the transcript cited by the Petitioner do not support his assertion that the Hearing Officer implied throughout the hearing that the Petitioner was guilty. The first reference (Transcript dated December 21, 1972, p. 104) contains nothing at all that could be interpreted to support the Petitioner's contention. The second reference (Transcript dated February 12, 1973, pp. 115-16) contains only a statement by the Hearing Officer to the effect that the Petitioner's guilt or innocence did not depend upon what acts of misconduct other persons may have committed. The third reference (Transcript dated February 12, 1973, p. 120) is to a statement by the Hearing Officer where he said, "Well, in all candor, you've brought a lot of that on yourself, I think," and this statement occurred at the very end of the entire disciplinary proceeding.

(d) The Respondent submits that this argument should be given no merit because the Petitioner has presented no argument and no authority in support of his assertion that the Hearing Officer made erroneous decisions on objections and motions. The Petitioner has failed to meet the burden of proof as required by Selling v. Radford, supra.

(e) The Respondent submits that the Petitioner has failed to show any basis for his assertion that the Hearing Officer was prejudiced against him. The Petitioner's citations to the transcript do not support his assertions that the Hearing Officer displayed anger towards him or criticized him. The other citations reveal that the Hearing Officer was acting properly in his role as fact-finder in the

matter and do not disclose any basis for a charge of prejudice against the Petitioner.

Conclusion

For the foregoing reasons it is respectfully submitted that this petition for a Writ of Certiorari should be denied.

Respectfully submitted,

s / Paul H. Buchanan, Jr.
Vice-Chairman
Indiana Supreme Court
Disciplinary Commission

s / John B. Ramming
Executive Secretary
Indiana Supreme Court
Disciplinary Commission

CODE OF PROFESSIONAL RESPONSIBILITY

Preamble

The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and his capacity through reason for enlightened self-government. Law so grounded makes justice possible, for only through such law does the dignity of the individual attain respect and protection. Without it, individual rights become subject to unrestrained power, respect for law is destroyed, and rational self-government is impossible.

Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship with and function in our legal system. A consequent obligation of lawyers is to maintain the highest standards of ethical conduct.

In fulfilling his professional responsibilities, a lawyer necessarily assumes various roles that require the performance of many difficult tasks. Not every situation which he may encounter can be foreseen, but fundamental ethical principles are always present to guide him. Within the framework of these principles, a lawyer must with courage and foresight be able and ready to shape the body of the law to the ever-changing relationships of society.

The Code of Professional Responsibility

points the way to the aspiring and provides standards by which to judge the transgressor. Each lawyer must find within his own conscience the touchstone against which to test the extent to which his actions should rise above minimum standards. But in the last analysis it is the desire for the respect and confidence of the members of his profession and of the society which he serves that should provide to a lawyer the incentive for the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction. So long as its practitioners are guided by these principles, the law will continue to be a noble profession. This is its greatness and its strength, which permit of no compromise.

Preliminary Statement

In furtherance of the principles stated in the Preamble, the American Bar Association has promulgated this Code of Professional Responsibility, consisting of three separate but interrelated parts: Canons, Ethical Considerations, and Disciplinary Rules. The Code is designed to be adopted by appropriate agencies both as an inspirational guide to the members of the profession and as a basis for disciplinary action when the conduct of a lawyer falls below the required minimum standards stated in the Disciplinary Rules.

Obviously the Canons, Ethical Considerations, and Disciplinary Rules cannot apply to non-lawyers; however, they do define the type of ethical conduct that the public has a right to expect not only of lawyers buy also of their non-professional employees and associates in all matters pertaining to professional employment.

A lawyer should ultimately be responsible for the conduct of his employees and associates in the course of the professional representation of the client.

The Canons are statements of axiomatic norms, expressing in general terms the standards of professional conduct expected of lawyers in their relationships with the public, with the legal system, and with the legal profession. They embody the general concepts from which the Ethical Considerations and the Disciplinary Rules are derived.

The Ethical Considerations are aspirational in character and represent the objectives toward which every member of the profession should strive. They constitute a body of principles upon which the lawyer can rely for guidance in many specific situations.

The Disciplinary Rules, unlike the Ethical Considerations, are mandatory in character. The Disciplinary Rules state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Within the framework of fair trial the Disciplinary Rules should be uniformly applied to all lawyers, regardless of the nature of their professional activities. The Code makes no attempt to prescribe either disciplinary procedures or penalties for violation of a Disciplinary Rule, nor does it undertake to define standards for civil liability of lawyers for professional conduct. The severity of judgment against one found guilty of violating a Disciplinary Rule should be determined by the character of the offense and the attendant circumstances. An enforcing agency, in applying

the Disciplinary Rules, may find interpretive guidance in the basic principles embodied in the Canons and in the objectives reflected in the Ethical Considerations.

IN THE SUPREME COURT

OF THE

STATE OF INDIANA

IN THE MATTER OF)
) SS:
BIAGIO J. PERRELLO)

CAUSE NO. 872 S 113

VERIFIED COMPLAINT FOR
DISCIPLINARY ACTION

The Disciplinary Commission of the Supreme Court of Indiana, having found reasonable cause to believe that Respondent's acts of misconduct, if proven, would warrant disciplinary action, by its Executive Secretary, JOHN B. RAMMING, pursuant to A.D. Rule 23, §12, Ind. Ann. Stat. (Special Supp. 1971), files and presents this Verified Complaint against BIAGIO J. PERRELLO, heretofore admitted to the Bar of the State of Indiana on May 20, 1970, and who now maintains an office for the practice of law in the City of Indianapolis, Marion County, Indiana. This Verified Complaint charges as follows:

COUNT I

That the said Respondent, BIAGIO J. PERRELLO, is a practicing attorney; that as a private practitioner he has recommended employment of himself to non-lawyers who have not sought his advice regarding his employment as a lawyer; that such conduct is exemplified by the following cases:

A. That the said Respondent, BIAGIO J. PERRELLO, did approach Miss Bonnie Halsey and Mrs. Bennie Harvey on or about January 10, 1972, in the corridor of the City-County Building adjacent to Municipal Courtroom Nine; that at this time, Respondent identified himself as an attorney and asked Miss Halsey and Mrs. Harvey what they had been charged with; that Respondent, upon learning the charges, then offered to represent Miss Halsey and Mrs. Harvey for a One

APPENDIX B

Hundred Dollar ($100.00) retainer and Five Hundred Dollars ($500.00) for the entire case; that Respondent then stated that for an extra Ten Dollars ($10.00) the case could be "fixed"; that neither Miss Halsey nor Mrs. Harvey had sought the Respondent's services as an attorney.

B. That the said Respondent, BIAGIO J. PERRELLO, did approach Mr. Charles F. Christian on or about April 11, 1972, in the corridor of the City-County Building adjacent to Municipal Courtroom Five; that at this time, Respondent identified himself as an attorney and gave Mr. Christian his business card; that Respondent also asked Mr. Christian what sort of trouble he was in and in which court he was to appear; that Respondent quoted a fee of Fifty Dollars ($50.00) to Mr. Christian to represent him; that Mr. Christian had not sought Respondent's services as an attorney.

C. That the said Respondent, BIAGIO J. PERRELLO, did approach Mr. John Cole on or about March 4, 1972, in the corridor of the City-County Building adjacent to Municipal Courtroom Five; that at this time, the Respondent identified himself to Mr. Cole as an attorney, the Respondent asked Mr. Cole who he was looking for, and gave Mr. Cole his business card; that Mr. Cole told the Respondent that he was looking for his attorney, Mr. Gordon Davis, to pay him Twenty-five Dollars ($25.00); that Respondent told Mr. Cole he would deliver the Twenty-five Dollars ($25.00) to Mr. Davis and took the money; that Respondent never delivered the money to Mr. Davis; that on or about March 8, 1972, Mr. Cole was again in the corridor adjacent to Municipal Courtroom Five; that at this time, Mr. Cole approached the Respondent to demand the return of his money; that Respondent then asked Mr. Cole if he wished to employ him and stated that he would handle the case for Five Hundred Dollars ($500.00); that Mr. Cole did not employ Respondent, did not get his Twenty-five Dollars ($25.00) back, and did not, at any time, seek Respondent's services as an attorney.

D. That the said Respondent, BIAGIO J. PERRELLO, did approach Mr. William G. Roush on or about June 12, 1972, in the corridor of

the City-County Building adjacent to Municipal Courtroom Four; that at this time, the Respondent asked Mr. Roush if he was going to Courtroom Four and what the charges were against him; that the Respondent gave Mr. Roush his business card and told Mr. Roush that he specialized in drunk driving cases; that Mr. Roush had not sought Respondent's services as an attorney.

E. That the said Respondent, BIAGIO J. PERRELLO, is not a fit and proper person to practice law in the State of Indiana for the reasons set forth in rhetorical paragraphs A, B, C, and D; that such conduct constitutes professional misconduct and violates D.R. 2-103(A), Code of Professional Responsibility for Attorneys at Law, Ind. Ann. Stat. (Special Supp. 1971).

COUNT II

That the said Respondent, BIAGIO J. PERRELLO, has given unsolicited advice to laymen that they should obtain counsel and has accepted employment resulting from that advice; that such conduct is exemplified by the following cases:

A. That the said Respondent, BIAGIO J. PERRELLO, did approach Ms. Betty Lou Barnes in January of 1972, in the corridor of the sixth floor of the east wing of the City-County Building; that at this time, the Respondent asked Ms. Barnes what her problem was and whether she had an attorney; that upon hearing Ms. Barnes' problem, Respondent warned Ms. Barnes that her son should not appear in court without an attorney due to the seriousness of the charges; that Ms. Barnes then inquired what the Respondent would charge to represent her son and thereafter, as a result of Respondent's advice, Ms. Barnes' daughter-in-law paid Respondent Twenty-three Dollars ($23.00) toward a Fifty Dollar ($50.00) retainer fee; that Ms. Barnes did not ask Respondent for his advice as to whether she should obtain counsel during her conversation with the Respondent; that Respondent accepted employment as a result of that advice; that Ms. Barnes and her son have since discharged Respondent from the case.

B. That the said Respondent, BIAGIO J. PERRELLO, did approach Mrs. Amanda A. Bruce on or about February 16, 1972, in the corridor of the City-County Building adjacent to Municipal Courtroom Ten; that at this time, the Respondent identified himself as an attorney, whereupon, Mrs. Bruce told the Respondent about her husband's problem; that the Respondent told Mrs. Bruce that her husband should have an attorney; that as a result of the Respondent's advice, Mrs. Bruce paid the Respondent a Fifty Dollar ($50.00) retainer; that Mrs. Bruce did not ask Respondent for his advice as to whether she should obtain counsel; that Respondent accepted employment as a result of that advice.

C. That the said Respondent, BIAGIO J. PERRELLO, is not a fit and proper person to practice law in the State of Indiana for the reasons set forth in rhetorical paragraphs A and B; that such conduct constitutes professional misconduct and violates D.R. 2-104(A) (1), Code of Professional Responsibility for Attorneys at Law, Ind. Ann. Stat. (Special Supp. 1971).

COUNT III

That on or about April 18, 1972, Mrs. John Mosley was in the corridor of the City-County Building adjacent to Courtroom Ten; that at this time, Mrs. Mosley made an inquiry of the Respondent, BIAGIO J. PERRELLO, as to where she could find Mr. John C. Christ; that the Respondent answered by stating that he did not know Mr. Christ, and asked Mrs. Mosley what her problem was and why she was there; that upon hearing Mrs. Mosley's problem, the Respondent advised Mrs. Mosley that she should have an attorney and offered his services; that Respondent also advised Mrs. Mosley that he was a bail bondsman and assured Mrs. Mosley that he would be able to dispose of her son's case in Municipal Court and avoid it being referred to either the Grand Jury or Criminal Court; that Mrs. Mosley did not ask the Respondent for his advice as to whether she should obtain counsel; that Respondent accepted the employment as a result of the advice and other misrepresentations made to Mrs. Mosley;

at Respondent failed to perform as he had promised Mrs. Mosley; at due to Mrs. Mosley's dissatisfaction with Respondent's rvices and the misrepresentations Respondent made to her, Mrs. sley has discharged the Respondent from the case; that such nduct involves moral turpitude and violates D.R. 1-102(A) (4) (6), and D.R. 2-104(A) (1), and D.R. 6-101(A) (2) and (3), of Professional Responsibility for Attorneys at Law, Ind. Stat. (Special Supp. 1971).

COUNT IV

That the said Respondent, BIAGIO J. PERRELLO, did approach Larry Shockley on or about April 10, 1972 in the corridor of e City-County Building adjacent to the Municipal Courtroom in ich Mr. Shockley was to appear; that the Respondent asked Mr. ockley what kind of trouble he was in, identified himself as attorney, and gave Mr. Shockley his business card; that the spondent advised Mr. Shockley that if he did not have a lawyer ask for a continuance that he would go to jail and that the udge involved was the roughest judge in town; that Mr. Shockley aid the Respondent Twenty-five Dollars ($25.00) as a retainer and a continuance was obtained; that Mr. Shockley did not ask the Respondent for his advice as to whether he should obtain counsel; that Respondent accepted the employment as a result of that advice; that prior to the trial, the Respondent informed Mr. Shockley's wife that he needed Three Hundred Dollars ($300.00) more on the fee in order to pay the policeman; that the Respondent further told Mr. Shockley's wife that he could not represent Mr. Shockley and would not be in court if he had not received the Three Hundred Dollars ($300.00) prior to entering the courtroom; that such conduct constitutes professional misconduct and violates D.R. 1-102(A) (4), (5), and (6) and D.R. 2-103(A), and D.R. 2-104 (A) (1), Code of Professional Responsibility for Attorneys at Law, Ind. Ann. Stat. (Special Supp. 1971).

COUNT V

That the said Respondent, BIAGIO J. PERRELLO, has been told on five occasions between the end of December, 1971, and the middle of June, 1972, by the Honorable D. William Cramer, Presiding Judge of the Municipal Court of Marion County, to terminate his daily and constant practice of soliciting clients and legal business in the public corridors adjacent to the several divisions of this Court; that despite such advice, the Respondent continues to engage in such misconduct with uninterrupted regularity; that such conduct constitutes professional misconduct and violates D.R. 1-102(A) (6) and D.R. 2-103(A), Code of Professional Responsibility for Attorneys at Law, Ind. Ann. Stat. (Special Supp. 1971).

That the said Respondent, BIAGIO J. PERRELLO, is not a fit and proper person to practice law in the State of Indiana for the reasons set forth in rhetorical Counts I, II, III, IV, and V, above.

WHEREFORE, the Executive Secretary prays that the said BIAGIO J. PERRELLO be disbarred, or be otherwise disciplined as is warranted, and that the Executive Secretary be ordered to prepare and submit to the Court an itemized statement of expenses allocable to this case incurred in the course of investigation, hearing, or review procedures as pursuant to A.D. Rule 23, §16, Ind. Ann. Stat. (Special Supp. 1971); and that the Court order the Respondent to pay such expenses to the Clerk of this Court.

John B. Ramming
Executive Secretary
Indiana Supreme Court
Disciplinary Commission

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

John B. Ramming, being duly sworn upon his oath, deposes and says that he is the Executive Secretary of the Disciplinary

Commission of the Supreme Court of Indiana, appointed pursuant to Ind. A.D. Rule 23 §8(a), Ind. Ann. Stat. (Special Supp. 1971); that he makes this affidavit as Executive Secretary of the Disciplinary Commission, and that the facts set forth in the above and foregoing Complaint are true as he is informed and believes.

John B. Ramming

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Subscribed and Sworn to before me, a Notary Public in and for said County and State, this 23 day of August, 1972.

Donna Jean York
Notary Public, Donna Jean York

MY COMMISSION EXPIRES:
10/7/75

IN THE SUPREME COURT

OF THE

STATE OF INDIANA

IN THE MATTER OF)
) SS:
BIAGIO J. PERRELLO)

CAUSE NO. 8725113

MOTION FOR SUSPENSION
PENDING PROSECUTION

The Disciplinary Commission of the Supreme Court of Indiana, having heretofore determined that the misconduct of the attorney named below, if proven, would warrant disciplinary action, and having directed its Executive Secretary to file the following Complaint, now by its Executive Secretary, JOHN B. RAMMING, pursuant to A.D. Rule 23, Sections 11(c) and 14(e) Ind. Ann. Stat. (Special Supp. 1971), moves the Court for an order to issue a rule against the Respondent, BIAGIO J. PERRELLO, heretofore admitted to the Bar of the State of Indiana on May 20, 1970 and maintaining an office for the practice of law in Indianapolis, Indiana, to show cause why he should not be suspended pending final determination of the cause, and requests that the court fix a time and place for a hearing thereon, and requests that notice of such hearing be served on the Respondent by personal service or certified or registered mail, all pursuant to Section 14(e) of the above-cited rule of Court, and such Executive Secretary now shows to the Court the following:

1. The Executive Secretary hereby incorporates by reference and makes a part hereof, and attaches hereto, the Verified Complaint for Disciplinary Action filed in the above case.

WHEREFORE, the Executive Secretary prays that the hearing officer or officers appointed to hear this matter issue a rule to show cause against the Respondent attorney fixing a time and

place for a hearing thereon, and giving the required notice, and that subsequent to said hearing said hearing officer or officers submit to the Supreme Court of the State of Indiana a written recommendation that the Respondent attorney be suspended pending final determination of this cause, and that the Supreme Court of Indiana order the Respondent attorney suspended pending final determination of this cause, and such other relief as is necessary and proper in the premises.

JOHN B. RAKING
Executive Secretary
Disciplinary Commission of the
Supreme Court of the
State of Indiana

IN THE SUPREME COURT

OF THE

STATE OF INDIANA

IN THE MATTER OF)
) SS: CAUSE NO. _____
BIAGIO J. PERRELLO)

VERIFIED COMPLAINT FOR
DISCIPLINARY ACTION

The Disciplinary Commission of the Supreme Court of Indiana, having found reasonable cause to believe that Respondent's acts of misconduct, if proven, would warrant disciplinary action, by its Executive Secretary, JOHN B. RAMMING, pursuant to A.D. Rule 23, §12, Ind. Ann. Stat. (Special Supp. 1971), files and presents this Verified Complaint against BIAGIO J. PERRELLO, heretofore admitted to the Bar of the State of Indiana on May 20, 1970, and who now maintains an office for the practice of law in the City of Indianapolis, Marion County, Indiana. This Verified Complaint charges as follows:

COUNT I

That the said Respondent, BIAGIO J. PERRELLO, is a practicing attorney; that as a private practitioner he has recommended employment of himself to non-lawyers who have not sought his advice regarding his employment as a lawyer; that such conduct is exemplified by the following cases:

1. That the said Respondent, BIAGIO J. PERRELLO, did approach Miss Bonnie Halsey and Mrs. Bennie Harvey on or about January 10, 1972, in the corridor of the City-County Building adjacent to Municipal Courtroom Nine; that at this time, Respondent identified himself as an attorney and asked Miss Halsey and Mrs. Harvey what they had been charged with; that Respondent, upon learning the charges, then offered to represent Miss Halsey and Mrs. Harvey for a One

Hundred Dollar ($100.00) retainer and Five Hundred Dollars ($500.00) for the entire case; that Respondent then stated that for an extra Ten Dollars ($10.00) the case could be "fixed"; that neither Miss Halsey nor Mrs. Harvey had sought the Respondent's services as an attorney.

B. That the said Respondent, BIAGIO J. PERRELLO, did approach Mr. Charles F. Christian on or about April 11, 1972, in the corridor of the City-County Building adjacent to Municipal Courtroom Five; that at this time, Respondent identified himself as an attorney and gave Mr. Christian his business card; that Respondent also asked Mr. Christian what sort of trouble he was in and in which court he was to appear; that Respondent quoted a fee of Fifty Dollars ($50.00) to Mr. Christian to represent him; that Mr. Christian had not sought Respondent's services as an attorney.

C. That the said Respondent, BIAGIO J. PERRELLO, did approach Mr. John Cole on or about March 4, 1972, in the corridor of the City-County Building adjacent to Municipal Courtroom Five; that at this time, the Respondent identified himself to Mr. Cole as an attorney, the Respondent asked Mr. Cole who he was looking for, and gave Mr. Cole his business card; that Mr. Cole told the Respondent that he was looking for his attorney, Mr. Gordon Davis, to pay him Twenty-five Dollars ($25.00); that Respondent told Mr. Cole he would deliver the Twenty-five Dollars ($25.00) to Mr. Davis and took the money; that Respondent never delivered the money to Mr. Davis; that on or about March 8, 1972, Mr. Cole was again in the corridor adjacent to Municipal Courtroom Five; that at this time, Mr. Cole approached the Respondent to demand the return of his money; that Respondent then asked Mr. Cole if he wished to employ him and stated that he would handle the case for Five Hundred Dollars ($500.00); that Mr. Cole did not employ Respondent, did not get his Twenty-five Dollars ($25.00) back, and did not, at any time, seek Respondent's services as an attorney.

D. That the said Respondent, BIAGIO J. PERRELLO, did approach Mr. William G. Roush on or about June 12, 1972, in the corridor of

the City-County Building adjacent to Municipal Courtroom Four; that at this time, the Respondent asked Mr. Roush if he was going to Courtroom Four and what the charges were against him; that the Respondent gave Mr. Roush his business card and told Mr. Roush that he specialized in drunk driving cases; that Mr. Roush had not sought Respondent's services as an attorney.

E. That the said Respondent, BIAGIO J. PERRELLO, is not a fit and proper person to practice law in the State of Indiana for the reasons set forth in rhetorical paragraphs A, B, C, and D; that such conduct constitutes professional misconduct and violates D.R. 2-103(A), Code of Professional Responsibility for Attorneys at Law, Ind. Ann. Stat. (Special Supp. 1971).

COUNT II

That the said Respondent, BIAGIO J. PERRELLO, has given unsolicited advice to laymen that they should obtain counsel and has accepted employment resulting from that advice; that such conduct is exemplified by the following cases:

A. That the said Respondent, BIAGIO J. PERRELLO, did approach Ms. Betty Lou Barnes in January of 1972, in the corridor of the sixth floor of the east wing of the City-County Building; that at this time, the Respondent asked Ms. Barnes what her problem was and whether she had an attorney; that upon hearing Ms. Barnes' problem, Respondent warned Ms. Barnes that her son should not appear in court without an attorney due to the seriousness of the charges; that Ms. Barnes then inquired what the Respondent would charge to represent her son and thereafter, as a result of Respondent's advice, Ms. Barnes' daughter-in-law paid Respondent Twenty-three Dollars ($23.00) toward a Fifty Dollar ($50.00) retainer fee; that Ms. Barnes did not ask Respondent for his advice as to whether she should obtain counsel during her conversation with the Respondent; that Respondent accepted employment as a result of that advice; that Ms. Barnes and her son have since discharged Respondent from the case.

B. That the said Respondent, BIAGIO J. PERRELLO, did approach Mrs. Amanda A. Bruce on or about February 16, 1972, in the corridor of the City-County Building adjacent to Municipal Courtroom Ten; that at this time, the Respondent identified himself as an attorney, whereupon, Mrs. Bruce told the Respondent about her husband's problem; that the Respondent told Mrs. Bruce that her husband should have an attorney; that as a result of the Respondent's advice, Mrs. Bruce paid the Respondent a Fifty Dollar ($50.00) retainer; that Mrs. Bruce did not ask Respondent for his advice as to whether she should obtain counsel; that Respondent accepted employment as a result of that advice.

C. That the said Respondent, BIAGIO J. PERRELLO, is not a fit and proper person to practice law in the State of Indiana for the reasons set forth in rhetorical paragraphs A and B; that such conduct constitutes professional misconduct and violates D.R. 2-104(A) (1), Code of Professional Responsibility for Attorneys at Law, Ind. Ann. Stat. (Special Supp. 1971).

COUNT III

That on or about April 18, 1972, Mrs. John Mosley was in the corridor of the City-County Building adjacent to Courtroom Ten; that at this time, Mrs. Mosley made an inquiry of the Respondent, BIAGIO J. PERRELLO, as to where she could find Mr. John C. Christ; that the Respondent answered by stating that he did not know Mr. Christ, and asked Mrs. Mosley what her problem was and why she was there; that upon hearing Mrs. Mosley's problem, the Respondent advised Mrs. Mosley that she should have an attorney and offered his services; that Respondent also advised Mrs. Mosley that he was a bail bondsman and assured Mrs. Mosley that he would be able to dispose of her son's case in Municipal Court and avoid it being referred to either the Grand Jury or Criminal Court; that Mrs. Mosley did not ask the Respondent for his advice as to whether she should obtain counsel; that Respondent accepted the employment as a result of the advice and other misrepresentations made to Mrs. Mosley;

that Respondent failed to perform as he had promised Mrs. Mosley; that due to Mrs. Mosley's dissatisfaction with Respondent's services and the misrepresentations Respondent made to her, Mrs. Mosley has discharged the Respondent from the case; that such conduct involves moral turpitude and violates D.R. 1-102(A) (4) and (6), and D.R. 2-104(A) (1), and D.R. 6-101(A) (2) and (3), Code of Professional Responsibility for Attorneys at Law, Ind. Ann. Stat. (Special Supp. 1971).

COUNT IV

That the said Respondent, BIAGIO J. PERRELLO, did approach Mr. Larry Shockley on or about April 10, 1972 in the corridor of the City-County Building adjacent to the Municipal Courtroom in which Mr. Shockley was to appear; that the Respondent asked Mr. Shockley what kind of trouble he was in, identified himself as an attorney, and gave Mr. Shockley his business card; that the Respondent advised Mr. Shockley that if he did not have a lawyer to ask for a continuance that he would go to jail and that the Judge involved was the roughest judge in town; that Mr. Shockley paid the Respondent Twenty-five Dollars ($25.00) as a retainer and a continuance was obtained; that Mr. Shockley did not ask the Respondent for his advice as to whether he should obtain counsel; that Respondent accepted the employment as a result of that advice; that prior to the trial, the Respondent informed Mr. Shockley's wife that he needed Three Hundred Dollars ($300.00) more on the fee in order to pay the policeman; that the Respondent further told Mr. Shockley's wife that he could not represent Mr. Shockley and would not be in court if he had not received the Three Hundred Dollars ($300.00) prior to entering the courtroom; that such conduct constitutes professional misconduct and violates D.R. 1-102(A) (4), (5), and (6) and D.R. 2-103(A), and D.R. 2-104 (A) (1), Code of Professional Responsibility for Attorneys at Law, Ind. Ann. Stat. (Special Supp. 1971).

COUNT V

That the said Respondent, BIAGIO J. PERRELLO, has been told on five occasions between the end of December, 1971, and the middle of June, 1972, by the Honorable D. William Cramer, Presiding Judge of the Municipal Court of Marion County, to terminate his daily and constant practice of soliciting clients and legal business in the public corridors adjacent to the several divisions of this Court; that despite such advice, the Respondent continues to engage in such misconduct with uninterrupted regularity; that such conduct constitutes professional misconduct and violates D.R. 1-102(A) (6) and D.R. 2-103(A), Code of Professional Responsibility for Attorneys at Law, Ind. Ann. Stat. (Special Supp. 1971).

That the said Respondent, BIAGIO J. PERRELLO, is not a fit and proper person to practice law in the State of Indiana for the reasons set forth in rhetorical Counts I, II, III, IV, and V, above.

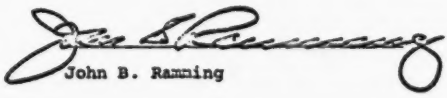
WHEREFORE, the Executive Secretary prays that the said BIAGIO J. PERRELLO be disbarred, or be otherwise disciplined as is warranted, and that the Executive Secretary be ordered to prepare and submit to the Court an itemized statement of expenses allocable to this case incurred in the course of investigation, hearing, or review procedures as pursuant to A.D. Rule 23, §16, Ind. Ann. Stat. (Special Supp. 1971); and that the Court order the Respondent to pay such expenses to the Clerk of this Court.

John B. Ramming
Executive Secretary
Indiana Supreme Court
Disciplinary Commission

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

John B. Ramming, being duly sworn upon his oath, deposes and says that he is the Executive Secretary of the Disciplinary

Commission of the Supreme Court of Indiana, appointed pursuant to Ind. A.D. Rule 23 §8(a), Ind. Ann. Stat. (Special Supp. 1971); that he makes this affidavit as Executive Secretary of the Disciplinary Commission, and that the facts set forth in the above and foregoing Complaint are true as he is informed and believes.



John B. Ramming

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Subscribed and Sworn to before me, a Notary Public in and for said County and State, this 23 day of August, 1972.

Donna Jean York

Notary Public, Donna Jean York

MY COMMISSION EXPIRES:

10/7/75

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing MOTION FOR SUSPENSION PENDING PROSECUTION was deposited in the United States Mail, First Class, postage prepaid, addressed to Biagio J. Perrello, 136 East Market Street, Indianapolis, Indiana, this 23rd day of August, 1972.

John B. Ramming
Executive Secretary
Indiana Supreme Court
Disciplinary Commission



SUMMONS

IN THE
SUPREME COURT
OF INDIANA

IN THE MATTER OF BIAGIO J. PERRELLO CAUSE NO. 27S113

TO RESPONDENT: Biagio J. Perrello
136 East Market Street
Indianapolis, Indiana

You are hereby notified that you have been named as respondent in the above named proceeding.

The nature of the cause against you is stated in the Verified Complaint which is attached to this Summons. It also states the relief sought by the Supreme Court Disciplinary Commission.

You have thirty (30) days, commencing the day after you receive this Summons, within which to file your return to this Verified Complaint.

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

I, Billie R. McCullough, Clerk of the Supreme Court of the State of Indiana, do hereby certify that the attached and foregoing is a true and complete copy of the Verified Complaint filed with the Court.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 23rd day of August, 1972.

Billie R. McCullough
Clerk, Supreme Court

STATE OF INDIANA

TO THE SHERIFF OF MARION COUNTY, Greetings:

You are hereby commanded to notify Biagio J. Perrello, 136 East Market Street, Indianapolis, by delivering to him a copy of the Verified Complaint for Disciplinary Action in the case of IN THE MATTER OF BIAGIO J. PERRELLO, No. 27S113, wherein a Verified Complaint has been filed, and notify said respondent that he has thirty days within which to file his return to this proceeding.

Came to hand 24th August, 1972.

Served on the with Biagio J. Perrello, 136 East Market Street, Indianapolis by delivering to him a copy of the Verified Complaint in the case of IN THE MATTER OF BIAGIO J. PERRELLO, No. 27S113 this 24th day of August, 1972.

L. R. Lee
Sheriff
By Lt. Bowman #16

JOHN B. RACKING
Attorney for Disciplinary Commission
814 ISTA Bldg.
Indianapolis, Indiana

Telephone (317) 633-4454

AUG 24 1972

APPENDIX D

INDIANA SUPREME COURT DISCIPLINARY COMMISSION
REQUEST FOR INVESTIGATION

TO: Executive Secretary
Indiana Supreme Court
Disciplinary Commission
314 State House
Indianapolis, Indiana 46204

John B. Ramming
Complainant's Name (Please Print)
814 I.S.T.A. Bldg, 150 W. Market
Street Address
Indianapolis
City
633-4454
Telephone

I wish to submit for consideration by your Commission the following complain and information respecting:

ATTORNEY'S NAME B.J. Perrello

ATTORNEY'S ADDRESS Rm. 901, 156 East Market Street, Indianapolis

PURPOSE FOR WHICH ATTORNEY WAS EMPLOYED _____

_____ DATE EMPLOYED _____

CAUSE NUMBER OF CASE _____ COURT _____

AGREED ATTORNEY'S FEE _____ TOTAL PAID ON FEE TO DATE _____

NATURE OF COMPLAINT AGAINST THE ATTORNEY: (State in full detail; use reverse side if necessary)

Several serious charges of misconduct have been brought to the attention of the Executive Secretary of the Indiana Supreme Court Disciplinary Commission by a letter and enclosures from Presiding Judge D. William Cramer of the Marion County Municipal Court. Specifically, these charges of misconduct concern:

1. Affidavit of John Cole, Exhibit 1 attached.
2. Affidavit of Anna Cole, Exhibit 2 attached.
3. Affidavit of Hazel Nash, Exhibit 3 attached.
4. Memorandum of Chief Bailiff, Municipal Court 9 - McClellan to Judge D. William Cramer, Exhibit 4 attached.
5. Memorandum to Judge D. William Cramer from Deputy Clerk Lawrence Rhodes, Deputy Clerk Reed Snott and Sgt. Richard Anderson, Indianapolis Police Department, Exhibit 5 attached.
6. Statement of Steve Sellmer, Probation Officer, Exhibit 6 attached
7. Letter to Hon. D. William Cramer from Patrick J. Barton, Judge Municipal Court No. 9, dated January 7, 1972, with accompanying transcript of proceeding held in Municipal Court No. 10, January 1, 1972, in State of Indiana v. Lydia Louise Tarvin, Exhibit 7 attached.
8. Transcript of Evidence taken in the Municipal Court of Marion County Room No. 5, in Causes M572-852, M572-853 and M572-870, State of Indiana v. David Sears, Exhibit 8 attached.

(see Page Two)

I (we) affirm, under the penalties for perjury, that the foregoing representation(s) is (are) true.

(Signed) John B. Ramming

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me the undersigned, a Notary Public in and for said County and Sta personally appeared John B. Ramming, and acknowledged the execution the foregoing instrument this 19th day of April, 1972.

Donna Jean York
Notary Public, Donna Jean Yor

My Commission Expires:

10/7/75

Date Filed: 4-19-72 Dy

ISCDC-Form 1-1971

APPENDIX E

9. Transcript taken in the Municipal Court of Marion County Room No. 10, Cause No. M1071-6543, State of Indiana v. Benny Fairchild.

10. Transcript taken in the Municipal Court of Marion County Room No. 10, Cause No. M107206, State of Indiana v. William Woodford.

The above indicates serious misconduct on the part of B.J. Perrello, an Indiana attorney, and should be investigated by this Commission for possible disciplinary action.

INDIANA SUPREME COURT DISCIPLINARY COMMISSION
REQUEST FOR INVESTIGATION

TO: Executive Secretary
Indiana Supreme Court
Disciplinary Commission
314 State House
Indianapolis, Indiana 46204

John B. Ramming
Complainant's Name (Please Print)

814 ISTA Bldg, 150 West Market
Street Address

Indianapolis
City

633-4454
Telephone

I wish to submit for consideration by your Commission the following complaint and information respecting:

ATTORNEY'S NAME B.J. Perrello

ATTORNEY'S ADDRESS Room 901, 156 East Market Street, Indianapolis

PURPOSE FOR WHICH ATTORNEY WAS EMPLOYED _____

_____ DATE EMPLOYED _____

CAUSE NUMBER OF CASE _____ COURT _____

AGREED ATTORNEY'S FEE _____ TOTAL PAID ON FEE TO DATE _____

NATURE OF COMPLAINT AGAINST THE ATTORNEY: (State in full detail; use reverse side if necessary)

Several more serious charges of misconduct have been brought to the attention of the Executive Secretary of the Indiana Supreme Court Disciplinary Commission by letters and enclosures from Presiding Judge D. William Cramer of the Marion County Municipal Court.

Specifically, these charges of misconduct concern:

1. Report to Judge D. William Cramer by Mr. and Mrs. Victor M. Bruce, Exhibit 1 attached.

2. Report to Judge D. William Cramer by Messrs. Robert D. Cameron and Von Cameron, Exhibit 2 attached.

3. Report to Judge D. William Cramer by Mr. Ronald C. Brown, Exhibit 3 attached.

4. Report to Judge D. William Cramer by Mr. and Mrs. Hampton Ray Posey, Exhibit 4 attached.

5. Letter to Judge D. William Cramer from Mr. George P. Rice, Exhibit 5 attached.

6. Transcript of Evidence taken in the Municipal Court of Marion County, Room No. 4, in Cause No. M472-2431, State of Indiana vs. Jewell Phillips, Exhibit 6 attached.

7. Transcript of Evidence taken in the Municipal Court of Marion County, Room No. 4, in Causes Nos. M472-543, M472-544 and M671-18941, State of Indiana vs. Charles H. Williams, Exhibit 7 attached.

APPENDIX F

8. Report to Judge D. William Cramer by Mr. Paul V. Rumple, Exhibit 8 attached.

9. Report to Judge D. William Cramer by Mr. Roger W. Techenbrock, Exhibit 9 attached.

10. Report to Judge D. William Cramer by Mr. George S. Huggins, Exhibit 10 attached.

11. Report to Judge D. William Cramer by Mr. Edward Q. Staples, Exhibit 11 attached.

12. Report to Judge D. William Cramer by Mrs. Rosemary M. Motes, Exhibit 12 attached.

13. Report to Judge D. William Cramer by Mr. and Mrs. John Mosley, Exhibit 13 attached.

14. Report to Judge D. William Cramer by Messrs, Charles F. Christian and Robert H. Burcham, Exhibit 14 attached.

15. Report to Judge D. William Cramer by Messrs Leandro Aragon and Samuel L. Horsley, Exhibit 15 attached.

16. Report to Judge D. William Cramer by Mr. William Venable, Exhibit 16 attached.

17. Report to Judge D. William Cramer by Mr. Thomas B. Davidson, Exhibit 17 attached.

18. Report to Judge D. William Cramer by Mr. James H. Horton, Exhibit 18 attached.

19. Report to Judge D. William Cramer by Miss Bonnie Halsey and Mrs. Bennie Harvey, Exhibit 19 attached.

The above indicates serious misconduct on the part of B.J. Perrello, an Indiana attorney, and should be investigated by this Commission for disciplinary action.

I (we) affirm, under the penalties for perjury, that the foregoing representation(s) is (are) true.

(Signed) John B. Ramming
JOHN B. RAMMING

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

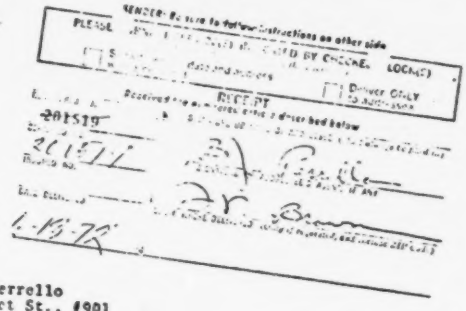
Before me the undersigned, a Notary Public in and for said County and State personally appeared John B. Ramming, and acknowledged the execution of the foregoing instrument this 23rd day of June, 1972.

Donna Jean York
Notary Public, Donna Jean York

My Commission Expires:
10/7/75

Date Filed: 6-23-72-Dy

ISCDC-Form 1-1971



Mr. B. J. Perrello
136 E. Market St., #901
Indianapolis, Indiana

Dear Mr. Perrello;

As Executive Secretary of the Indiana Supreme Court Disciplinary Commission, I have determined, upon consideration of the grievance, the preliminary investigation, and your response, that there is reasonable cause to believe that you have been guilty of misconduct as stated in the grievance filed against you in this office on April 25, 1972 by John Ramming.

This matter has been assigned Docket Number D 2472 B and has been docketed for investigation and report to the Indiana Supreme Court Disciplinary Commission as per Sections 10(b) and 10(c) of Indiana Supreme Court Rule A.D. 23.

Sincerely,

John B. Ramming
Executive Secretary

JBR/dad

APPENDIX G

August 15, 1972

Mr. B. J. Perrello
Room 901, 156 E. Market St.
Indianapolis, Indiana

Dear Mr. Perrello:

As Executive Secretary of the Indiana Supreme Court Disciplinary Commission, I have determined, upon consideration of the grievance and the preliminary investigation, that there is reasonable cause to believe that you have been guilty of misconduct as stated in the grievance filed against you in this office on June 23, 1972, by John Ramming.

This matter has been assigned Docket Number D 2472 E and has been docketed for investigation and report to the Indiana Supreme Court Disciplinary Commission, as per Sections 10(b) and 10(c) of Indiana Supreme Court Rule A.D. 23.

Sincerely,

John B. Ramming
Executive Secretary

JBR/dad

APPENDIX H